



UTAH STATE OFFICE  
STATE DIRECTORS OFFICE

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September 28, 2017

Via Overnight Mail

Ed Roberson  
State Director  
U.S. Bureau of Land Management  
Utah State Office  
440 West 200 South, Suite 500  
Salt Lake City, UT 84101

**Re: Protest of December 12, 2017 Competitive Oil and Gas Lease Sale**

Dear Mr. Roberson:

Pursuant to 43 C.F.R. § 3120.1-3, WildEarth Guardians hereby protests the Bureau of Land Management's ("BLM's") proposal to offer 75 publicly owned oil and gas lease parcels covering approximately 94,000 acres of land for competitive sale on December 12, 2017. The parcels are located in the Vernal and Price Field Offices in Duchesne, Grand, Uintah, and Emery Counties, Utah. The lease parcels included for sale, as identified by the BLM's in its Final December 2017 Oil and Gas Sale List,<sup>1</sup> include the following:

Lease Serial Number	Acres	Field Office	County
UTU92656	980.79	Vernal	Duchesne
UTU92657	2125.03	Vernal	Duchesne
UTU92658	258.40	Vernal	Duchesne
UTU92659	800.00	Vernal	Duchesne
UTU92660	641.04	Vernal	Duchesne
UTU92661	480.00	Vernal	Duchesne
UTU92662	80.00	Vernal	Duchesne
UTU92663	1020.76	Vernal	Duchesne
UTU92664	1761.40	Vernal	Duchesne
UTU92665	320.00	Vernal	Duchesne
UTU92666	1122.72	Vernal	Duchesne

<sup>1</sup> This list of lease parcels is available on the BLM's website at <https://eplanning.blm.gov/epl-front-office/projects/nepa/77105/119126/145385/2UtahDec2017FinalSaleList.pdf>.

UTU92667	2199.60	Vernal	Duchesne
UTU92668	2080.00	Vernal	Duchesne
UTU92669	600.00	Vernal	Duchesne
UTU92670	640.00	Vernal	Duchesne
UTU92671	80.00	Vernal	Duchesne
UTU92672	1434.48	Vernal	Duchesne
UTU92673	853.78	Vernal	Duchesne
UTU92674	640.00	Vernal	Duchesne (183.24) & Uintah (456.76)
UTU92675	359.20	Vernal	Duchesne
UTU92676	320.00	Vernal	Uintah
UTU92677	952.05	Vernal	Uintah
UTU92678	290.76	Vernal	Uintah
UTU92679	859.60	Vernal	Uintah
UTU92680	1920.00	Vernal	Uintah
UTU92681	80.00	Vernal	Uintah
UTU92682	1794.16	Vernal	Uintah
UTU92683	1155.38	Vernal	Uintah
UTU92684	1401.43	Vernal	Uintah
UTU92685	320.00	Vernal	Uintah
UTU92686	640.00	Vernal	Uintah
UTU92687	320.00	Vernal	Uintah
UTU92688	1566.14	Vernal	Uintah
UTU92689	903.32	Vernal	Uintah
UTU92690	1080.00	Vernal	Uintah
UTU92691	144.64	Vernal	Uintah
UTU92692	478.28	Vernal	Uintah
UTU92693	1040.00	Vernal	Uintah
UTU92694	1321.60	Vernal	Uintah
UTU92695	2282.27	Vernal	Uintah
UTU92696	360.00	Vernal	Uintah
UTU92697	563.88	Vernal	Uintah
UTU92698	317.92	Vernal	Uintah
UTU92699	1175.42	Vernal	Uintah
UTU92700	1861.16	Vernal	Uintah
UTU92701	320.00	Vernal	Uintah
UTU92702	720.00	Vernal	Uintah
UTU92703	360.00	Vernal	Uintah
UTU92704	552.49	Vernal	Uintah

UTU92705	905.62	Vernal	Grand
UTU92706	959.23	Vernal	Grand
UTU92707	2141.56	Vernal	Uintah
UTU92708	2397.57	Vernal	Uintah
UTU92709	1574.63	Vernal	Uintah
UTU92710	1920.00	Vernal	Uintah
UTU92711	2560.00	Vernal	Uintah
UTU92712	2370.88	Vernal	Uintah
UTU92713	1920.00	Vernal	Uintah
UTU92714	1520.00	Vernal	Uintah
UTU92715	2095.30	Price	Emery
UTU92716	2421.84	Price	Emery
UTU92717	2560.00	Price	Emery
UTU92718	2560.00	Price	Emery
UTU92719	1280.00	Price	Emery
UTU92720	1920.00	Price	Emery
UTU92721	2520.00	Price	Emery
UTU92722	1136.20	Price	Emery
UTU92723	2160.00	Price	Emery
UTU92724	1920.00	Price	Emery
UTU92725	2089.00	Price	Emery
UTU92726	2394.00	Price	Emery
UTU92727	2518.00	Price	Emery
UTU92728	2100.00	Price	Emery
UTU92729	2361.00	Price	Emery
UTU92730	160 (50% federal minerals)	Vernal	Uintah

In support of its proposed leasing, the agency prepared two separate Environmental Assessments ("EAs"), one for the Vernal Field Office parcels, DOI-BLM-UT-G010-2017-0028-EA, and one for the Price Field Office parcels, DOI-BLM-UT-G020-2017-0030-EA. As will be explained below, the BLM's EAs and proposals to lease fall short of ensuring compliance with applicable environmental protection laws, including the Clean Air Act, 42 U.S.C. §§ 7401–7671q, the Federal Land Management and Planning Act ("FLPMA"), 43 U.S.C. §§ 1701–1787, and the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321–4370h. The agency's EAs are therefore deficient and fail to provide sufficient justification for the proposed actions and the decision to issue two FONSIs. Thus, we request the BLM refrain from offering the 75 proposed lease parcels for sale and issuance, unless and until the BLM corrects these deficiencies.

#### STATEMENT OF INTEREST

WildEarth Guardians is a nonprofit environmental advocacy organization dedicated to protecting the wildlife, wild places, wild rivers, and health of the American West. On behalf of our members, Guardians has an interest in ensuring the BLM fully protects public lands and resources as it conveys the right for the oil and gas industry to develop publicly-owned minerals. More specifically, Guardians has an interest in ensuring the BLM meaningfully and genuinely takes into account the air quality and climate implications of its oil and gas leasing decisions and objectively and robustly weighs the costs and benefits of authorizing the release of more greenhouse gas emissions that are known to contribute to global warming.

WildEarth Guardians has submitted extensive comments on the proposed leasing, including comments submitted on July 24, 2017 on the BLM's draft EAs for the Vernal and Price Field Offices.<sup>2</sup> WildEarth Guardians has also consistently and extensively commented on and protested BLM's proposed oil and gas leasing in Utah over the years, including raising concerns over the agency's failure to adequately address climate impacts.<sup>3</sup>

The mailing address for WildEarth Guardians to which correspondence regarding this protest should be directed is as follows:

WildEarth Guardians  
2590 Walnut St.  
Denver, CO 80205

## **STATEMENT OF REASONS**

WildEarth Guardians protests the BLM's December 12, 2017 oil and gas lease sale because the agency's EA fails to adequately analyze the impacts of leasing the Vernal FO parcels on a pending nonattainment designation under the 2015 National Ambient Air Quality Standards ("NAAQS") for ozone. Furthermore, the agency fails to adequately analyze and assess the climate impacts of the reasonably foreseeable oil and gas development that will result, contrary to the requirements of NEPA, and its regulations promulgated thereunder by the White House Council on Environmental Quality ("CEQ"), 40 C.F.R. § 1500-1508.

### **I. Legal Background**

#### **A. Requirements of Clean Air Act and FLPMA**

Under FLPMA, BLM is required to "provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards[.]" 43 U.S.C. § 1712(c)(8). Thus, BLM is required to comply with the Clean Air Act. The Clean Air Act provides, "No department, agency, or instrumentality of the Federal Government shall

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<sup>2</sup> For purposes of this protest, we hereby incorporate by reference WildEarth Guardians' comments and attachments submitted on July 24, 2017 in response to the BLM's Draft EAs for the Vernal and Price Field Offices.

<sup>3</sup> For example, Guardians commented on and protested the June 2017 oil and gas lease sale: [https://eplanning.blm.gov/epl-front-office/projects/nepa/68693/107645/131918/WildEarth\\_Guardians.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/68693/107645/131918/WildEarth_Guardians.pdf).

engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity” that does not conform to an approved state air quality implementation plan. 42 U.S.C. § 7506(c)(1). “The assurance of conformity . . . shall be an affirmative responsibility of the head of such . . . agency.” Thus, agency actions must not 1) “**cause or contribute to any new violation of any [air quality] standard,**” 2) “increase the frequency or severity of any existing violation of any standard in any area,” 3) or “delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.” *Id.* § 7506(c)(1)(B) (emphasis added). This language is broadly applicable.

## **B. Requirements of NEPA**

BLM is also required to comply with NEPA. NEPA is our “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). The law requires federal agencies to fully consider the environmental implications of their actions, taking into account “high quality” information, “accurate scientific analysis,” “expert agency comments,” and “public scrutiny,” prior to making decisions. *Id.* at 1500.1(b). This consideration is meant to “foster excellent action,” resulting in decisions that are well informed and that “protect, restore, and enhance the environment.” *Id.* at 1500.1(c).

To fulfill the goals of NEPA, federal agencies are required to analyze the “effects,” or impacts, of their actions to the human environment prior to undertaking their actions. 40 C.F.R. § 1502.16(d). To this end, the agency must analyze the “direct,” “indirect,” and “cumulative” effects of its actions, and assess their significance. *Id.* §§ 1502.16(a), (b), and (d). Direct effects include all impacts that are “caused by the action and occur at the same time and place.” *Id.* § 1508.8(a). Indirect effects are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.* at § 1508.8(b). Cumulative effects include the impacts of all past, present, and reasonably foreseeable actions, regardless of what entity or entities undertake the actions. *Id.* § 1508.7. Federal agencies are required to “integrate the NEPA process with other planning at the earliest possible time . . . to head off potential conflicts.” *Id.* at § 1501.2.

An agency may prepare an environmental assessment (“EA”) to analyze the effects of its actions and assess the significance of impacts. *See id.* § 1508.9; *see also* 43 C.F.R. § 46.300. Where effects are significant, an agency must prepare an Environmental Impact Statement (“EIS”). *See* 40 C.F.R. § 1502.3. Where significant impacts are not significant, an agency may issue a Finding of No Significant Impact (“FONSI”) and implement its action. *See id.* § 1508.13; *see also* 43 C.F.R. § 46.325(2).

Within an EA or EIS, the scope of the analysis must include “[c]umulative actions” and “[s]imilar actions.” 40 C.F.R. §§ 1508.25(a)(2) and (3). Cumulative actions include action that, “when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.” *Id.* § 1508.25(a)(2). Similar actions include actions that, “when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together.” *Id.* § 1508.25(a)(3). Key indicators of similarities between actions include “common timing or geography.” *Id.*



## **II. The BLM Fails to Consider the Impacts of Leasing the Vernal Field Office Parcels on Nonattainment with EPA's 2015 National Ambient Air Quality Standards for Ozone.**

As stated above, the BLM “shall integrate the NEPA process with other planning at the earliest possible time . . . to head off potential conflicts,” and must analyze cumulative effects from “past, present, and reasonably foreseeable actions, regardless of what entity or entities undertake the actions,” and *Id.* at §§ 1501.2, 1508.7. “Effects are reasonably foreseeable if they are ‘sufficiently likely to occur that a person of ordinary prudence would take [them] into account in reaching a decision.’” *Sierra Club v. Fed. Energy Reg. Comm’n*, No. 16-1329 (Aug. 22, 2017, D.C. Cir.) (quoting *EarthReports, Inc. v. FERC*, 828 F.3d 949, 955 (D.C. Cir. 2016)).

On October 26, 2015, the EPA promulgated a new NAAQS for ozone as required by the Clean Air Act in order to protect public health and welfare. *See* National Ambient Air Quality Standards for Ozone, 80 Fed. Reg. 65292 (Oct. 26, 2015), (citing 42 U.S.C. 7409(d)(1)), <https://www.gpo.gov/fdsys/pkg/FR-2015-10-26/pdf/2015-26594.pdf>. In its rule, the EPA set the primary standard for ozone at .070 parts per million over an 8-hour averaging time. *Id.*<sup>4</sup> Compliance with the NAAQS is demonstrated when the three-year average of the fourth highest annual 8-hour readings are at 0.070 parts per million or below. The states then had one year to assess compliance with the standard and identify initial designations of compliance. *Id.* at 65437 (citing 42 U.S.C. 7407(d)(1)).

In response to this requirement, Utah completed a report in September 2016 which recommended “the establishment of a nonattainment area for the 2015 ozone standard in the counties of Duchesne and Uintah.” Exhibit 1, to WildEarth Guardian’ July 24, 2017 comments for the Vernal FO EA. In its report, Utah concludes that the Uinta Basin’s background concentration of ozone “has exceeded the 2015 ozone standard.” *Id.* at 51. The state also concludes that “[w]ith the emission inventory data and evidence provided by the wintertime ozone studies, it can be concluded that oil and gas production and development is the most significant emission source in the Basin.” *Id.* at 42. Therefore, the state recommends “the establishment of a nonattainment area for the 2015 ozone standard in the counties of Duchesne and Uintah.” *Id.* at 54. EPA will take action on this recommendation in October of this year as required by the Clean Air Act. *See* NAAQS Ozone Rule, 80 Fed. Reg. at 65437.

The BLM argues in its response to comments that it need not consider the impending nonattainment designation because the agency is not authorizing development, thus no emissions will occur from the lease sale and the “air quality impacts cannot be evaluated to determine compliance with the NAAQS.” Vernal FO EA at 317. There are a number of flaws with this argument. First, the agency can clearly estimate emissions as shown by its own analyses. For example, in the Vernal Field Office EA, the BLM provides estimated emissions for a single well. *Id.* at 47. BLM then explains, “[t]o determine RFD [reasonably foreseeable development] emissions, multiply the below number by the 135 assumed wells.” *Id.* Thus, all that stands in the

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<sup>4</sup> The EPA also retained prior ozone NAAQS, including the 2008 ozone NAAQS, which limited ambient concentrations to no more than 0.075 parts per million over an eight hour period. *See* 40 C.F.R. § 50.15.

way of a final estimate of reasonably foreseeable emissions is multiplication. Guardians has completed this step in the table below.

<b>Anticipated Emissions Per Well and Total (tons per year)</b>				
<b>Pollutant</b>	<b>Development</b>	<b>Production</b>	<b>Total</b>	<b>Overall Total (assuming 135 wells)</b>
NO <sub>x</sub>	14.2	2.2	16.4	2214
CO	3.2	3.2	6.4	864
SO <sub>x</sub>	0.9	0	0.9	121.5
PM <sub>10</sub>	0.7	0.03	0.73	98.55
PM <sub>2.5</sub>	0.3	0.01	0.31	41.85
VOC	2.4	6.5	9	1215
Benzene	0.03	0.13	0.16	21.6
Toluene	0.02	0.09	0.11	14.85
Ethylbenzene	0.02	0.22	0.24	32.4
Xylene	0	0.07	0.07	9.45
n-Hexane	0.05	0.08	0.13	17.55
Formaldehyde	0	0	0	0

As you can see from the table, emissions for ozone precursors, NO<sub>x</sub> and VOCs, are substantial and would surpass the 100 tons per year threshold thereby triggering a conformity determination.<sup>5</sup> Therefore, it is likely that estimated emissions from the lease sale would be significant and could impact any nonattainment designation for ozone by increasing the severity of nonattainment. This is important because the language of the conformity requirements includes a provision that federal agency actions cannot “**cause or contribute to any new violation of any [air quality] standard.**” 42 U.S.C. § 7506(c)(1)(B). Thus, even if the EPA has not yet designated the Uintah Basin as in nonattainment for ozone, the BLM cannot approve agency actions that will contribute to a new violation. Either way, the BLM must at a minimum acknowledge the upcoming designation and discuss whether approving the lease sale complies with the Clean Air Act.

Second, the agency’s argument is very similar to the argument that the D.C. Circuit struck down in its recent decision in *Sierra Club v. Fed. Energy Reg. Comm’n*, No. 16-1329 (Aug. 22, 2017, D.C. Cir.). There the court found that greenhouse gas emissions from combustion of natural gas were reasonably foreseeable effects from the approval of a natural gas pipeline because combustion of natural gas was the “project’s entire purpose.”

Here, the entire point of leasing is to facilitate oil and gas development, thus at least some emissions from the lease sale are reasonably foreseeable. It is highly unlikely that leases in the heavily-developed Uinta Basin will not result in some development. This conclusion is further

<sup>5</sup> Under the Clean Air Act, if an area is designated as in nonattainment for ozone, the BLM must make a general conformity determination for any activity authorized in that area that has direct and indirect emissions of volatile organic compounds (“VOCs”) or nitrogen oxides (“NO<sub>x</sub>”) that exceed 100 tons/year. See 40 C.F.R. § 93.153(b)(1).

underscored by the language in BLM's notice of the lease sale. BLM offers the parcels "[i]n keeping with the Administration's goal of strengthening America's energy independence."<sup>6</sup> BLM also notes that "[o]il and gas development on BLM-managed lands in Utah contributed \$1.7 billion to the economy and supported 9,171 jobs in Fiscal Year 2016." The BLM cannot argue that emissions from the lease sale are not reasonably foreseeable when it is clear that BLM's entire purpose for holding the sale is development, as was the case in the Sierra Club decision. Again, at a minimum, the BLM should have discussed Utah's nonattainment recommendation and inevitability that the EPA will act on this recommendation very soon in the EA and resolved to defer any parcels within the potential nonattainment area until this issue is resolved.

### **III. The BLM Fails to Consider the Impacts of Leasing the Vernal Field Office Parcels on Compliance with FLPMA.**

The failure to appropriately analyze and assess the impacts of reasonably foreseeable development of the proposed leases on ground-level ozone concentrations also means that approval of the lease modifications would violate the BLM's duty under FLPMA to "provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards[.]" 43 U.S.C. § 1712(c)(8).

As it stands currently, the underlying Resource Management Plan fails to address the fact that the Uinta Basin is out of attainment with the ozone NAAQS. In addition, the BLM has not proposed to undertake any revision or amendment to the RMP to address ozone violations in the Basin. Thus, implementation of the current RMP is clearly failing to protect air quality standards consistent with FLPMA. If implementation of an RMP is not providing for compliance with applicable air pollution standards or implementation plans, then the BLM must amend or revise the RMP to ensure compliance in accordance with 43 C.F.R. §§ 1610-5.5 or 1610-5.6. To this end, the BLM must amend or revise the Vernal RMP so as to protect air quality consistent with FLPMA and must do so before moving forward with any additional leasing in the Uinta Basin.

The agency's Land Use Planning Handbook underscores the need for the BLM to amend or revise the Vernal RMP to address air quality concerns in the Uinta Basin. The Handbook states that, "revisions are necessary if monitoring and evaluation findings, new data, new or revised policy, or changes in circumstances indicate that decisions for an entire plan or a major portion of the plan no longer serve as a useful guide for resource management." BLM Land Use Planning Handbook, H-1610-1, Section VII.C at 46. Here, given the inevitability of EPA designating Uinta Basin as in nonattainment, it appears that decisions for the entire Vernal RMP no longer serve as a useful guide for resource management, particularly with regards to protecting air quality.

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<sup>6</sup> BLM, News Release: BLM to Offer 75 Parcels in December Oil and Gas Lease Sale, Sept. 1, 2017, [https://eplanning.blm.gov/epl-front-office/projects/nepa/80165/119123/145378/BLM News Release BLM to offer 75 parcels in December oil and gas lease sale 09-01-17.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/80165/119123/145378/BLM%20News%20Release%20BLM%20to%20offer%2075%20parcels%20in%20December%20oil%20and%20gas%20lease%20sale%2009-01-17.pdf).



Furthermore, the Handbook states that amendments are needed whenever there is a need to “[c]onsider a proposal or action that does not conform to the plan,” “implement new or revised policy that changes land use plan decisions,” “respond to new, intensified, or changed uses on public land,” or “consider significant new information from resource assessments, monitoring, or scientific studies that change land use plan decisions.” *Id.* Section VII.B at 45. Here, the inevitable designation of the Uinta Basin as a Nonattainment Area and the existence of violations of the ozone NAAQS confirms that: 1) implementation of project-level pollutant emitting actions under the RMP do not conform with the requirement to protect air quality standards; 2) the new violations of the ozone NAAQS means the BLM must implement a new policy with bearing on RMP decisions; 3) the inevitable designation of the Uinta Basin Nonattainment Area means that uses of public lands pose new and more intensive air quality impacts than previously determined; and 4) the inevitable designation of the Uinta Basin as nonattainment and the eventual applicability of EPA general conformity rules represents significant new information that has major bearing on RMP decisions.

Given the widespread implications of ozone violations in the Uinta Basin and the inevitable nonattainment designation, it appears that revision of the Vernal RMP is warranted. At a minimum, it must be amended to ensure protection of air quality under FLPMA. The BLM cannot move forward with the proposed leasing given the air quality implications. The agency must first revise or amend its RMP and must fully comply with NEPA before moving forward with any new leasing.

#### **IV. The BLM Fails to Fully Analyze and Assess the Cumulative Impacts of Greenhouse Gas Emissions that Would Result from Issuing the Proposed Lease Parcels.**

Although the BLM acknowledges that the decision to develop the lease parcels could result in greenhouse gas emissions and goes on to estimate emissions under the Reasonably Foreseeable Development reports from the RMPs at issue, see Vernal FO EA at 53 and Price FO EA at 39, the agency completely fails to discuss the cumulative climate impacts from the similar actions occurring from BLM lease sales in the Rocky Mountain region as required by NEPA.

An agency must analyze the impacts of “similar” and “cumulative” actions in the same NEPA document in order to adequately disclose impacts in an EIS or provide sufficient justification for a FONSI in an EA. *See* 40 C.F.R. §§ 1508.25(a)(2) and (3). Both the Vernal and Price Field Office EAs completely ignore the cumulative impacts that will result from past and future lease sales in Utah and surrounding states.

- **Utah:** In March, 2017, the BLM sold 4 parcels covering 4,174.46 acres in the Canyon Country District of Utah. *See* [https://www.blm.gov/sites/blm.gov/files/Programs\\_OilandGas\\_Leasing\\_RegionalLeaseSales\\_Utah\\_2017\\_SaleResults.pdf](https://www.blm.gov/sites/blm.gov/files/Programs_OilandGas_Leasing_RegionalLeaseSales_Utah_2017_SaleResults.pdf). And on June 15, 2017, the agency sold 8 parcels, totaling 7,479 acres in the Color Country District Office for sale. *See* [https://www.blm.gov/sites/blm.gov/files/Programs\\_EnergyandMinerals\\_OilandGas\\_Leasing\\_RegionalLeaseSales\\_Utah\\_2017\\_SaleResults.pdf](https://www.blm.gov/sites/blm.gov/files/Programs_EnergyandMinerals_OilandGas_Leasing_RegionalLeaseSales_Utah_2017_SaleResults.pdf). In September, the BLM sold 9 parcels containing 4,101.7 acres for sale in the West Desert District. *See*

[https://www.blm.gov/sites/blm.gov/files/Programs OilandGas Leasing RegionalLeaseSales Utah 2017 SALERESULTS.pdf](https://www.blm.gov/sites/blm.gov/files/Programs%20OilandGas%20Leasing%20RegionalLeaseSales%20Utah%202017%20SALERESULTS.pdf).

- **Wyoming:** In February of 2017, the BLM sold 278 parcels covering 183,155.020 acres in the High Plains and Wind River-Bighorn Basin District Offices. See [https://eplanning.blm.gov/epl-front-office/projects/nepa/65707/96936/117093/SALE RESULTS Feb 2017.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/65707/96936/117093/SALE_RESULTS_Feb_2017.pdf). In June, the sold 26 parcels covering 31,924.77 acres in the High Desert District Office. See <https://eplanning.blm.gov/epl-front-office/projects/nepa/65707/110941/135810/SALERESULTS.pdf>. In September, BLM sold 127 parcels totaling 106,687 acres. See [https://eplanning.blm.gov/epl-front-office/projects/nepa/65707/121307/148154/SALE RESULTS 3rd Qtr 2017.v3.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/65707/121307/148154/SALE_RESULTS_3rd_Qtr_2017.v3.pdf). And this December, the agency is offering 45 parcels (72,843.75). See [https://eplanning.blm.gov/epl-front-office/projects/nepa/65707/115163/140610/Sale Notice.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/65707/115163/140610/Sale_Notice.pdf).
- **Colorado:** On March 9, 2017, the BLM sold 17 parcels covering 16,447.180 acres. See [https://eplanning.blm.gov/epl-front-office/projects/nepa/70207/99188/120209/Sale Results March2017.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/70207/99188/120209/Sale_Results_March2017.pdf). On June 8, 2017, the BLM sold 70 parcels covering 63,268.120 acres in western Colorado. See [https://eplanning.blm.gov/epl-front-office/projects/nepa/70241/109218/133789/Sale Results June2017.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/70241/109218/133789/Sale_Results_June2017.pdf). In December of 2017, the BLM is also contemplating the sale of 28 parcels covering 27,283.79 acres in western Colorado. See [https://eplanning.blm.gov/epl-front-office/projects/nepa/72396/96540/116594/GJFO&CRVFO Initial Parcel List Scoping Dec2017.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/72396/96540/116594/GJFO&CRVFO_Initial_Parcel_List_Scoping_Dec2017.pdf).
- **New Mexico:** The BLM held lease sales on January 25, 2017 where it sold 4 parcels (842.66 acres), [https://eplanning.blm.gov/epl-front-office/projects/nepa/68428/96009/116065/Jan2017 SaleResults.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/68428/96009/116065/Jan2017_SaleResults.pdf), and on June 8, 2017 where it sold 17 parcels (4,230.56 acres), [https://eplanning.blm.gov/epl-front-office/projects/nepa/68426/109289/133858/June 8 2017 Sale Results.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/68426/109289/133858/June_8_2017_Sale_Results.pdf). The BLM sold 61 parcels totaling 15,331.91 acres at the lease sale in September. See [https://eplanning.blm.gov/epl-front-office/projects/nepa/69506/119984/146392/NM 090717 LeaseSaleResults.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/69506/119984/146392/NM_090717_LeaseSaleResults.pdf).
- **Nevada:** the BLM sold 20 parcels (35,502.86 acres) at its March sale and 3 parcels (5,760 acres) at its June lease sale. The results for both sales are available under "2017 Lease Sales" at: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada>.
- **All told, the BLM has leased or is proposing to lease approximately 717 parcels or 579,005.78 acres of publically-owned land in the states listed above in 2017.**

Although the both EAs generally acknowledges there will be future greenhouse gas emissions from reasonably foreseeable development of the leases, there is no attempt in either to

analyze these emissions in the context of oil and gas development within the actual cumulative impact area. The Vernal Field Office EA states that “[t]he cumulative impact area for air quality is the Uinta Basin, plus all regional Class I areas and other environmentally sensitive areas (e.g., national parks and monuments, wilderness areas, etc.) near the Uinta Basin” (see Vernal FO EA at 72), yet makes no attempt to actually analyze or assess reasonably foreseeable emissions within this area. The Price Field Office’s EA similarly fails. Although the BLM designates the cumulative impact analysis area as the area within and near the Price Field Office, the BLM similarly fails to provide a specific analysis of the cumulative greenhouse gas emissions within this area. See Price FO EA at 50. Without any analysis of past, present, and reasonably foreseeable greenhouse gas emissions from these similar oil and gas leasing actions, the agency’s proposed FONSI is unsupported under NEPA.

**V. The BLM Fails to Analyze the Costs of Reasonably Foreseeable Carbon Emissions Using Well-Accepted, Valid, Credible, GAO-Endorsed, Interagency Methods for Assessing Carbon Costs.**

In addition to the lack of cumulative impacts analysis, it is particularly disconcerting that the agency fails to discuss, analyze, and assess the costs of the lease sales using the social cost of carbon protocol, a valid, well-accepted, credible, and interagency endorsed method of calculating the costs of greenhouse gas emissions and understanding the potential significance of such emissions. See Vernal FO EA at 54–55 and Price FO EA at 40. The agency omits this analysis from both EAs even though it touts the economic benefits from past oil and gas lease sales in its “News Release.”<sup>7</sup>

The social cost of carbon protocol for assessing climate impacts is a method for “estimat[ing] the economic damages associated with a small increase in carbon dioxide (CO<sub>2</sub>) emissions, conventionally one metric ton, in a given year [and] represents the value of damages avoided for a small emission reduction (i.e. the benefit of a CO<sub>2</sub> reduction).” Exhibit 2, to WildEarth Guardians’ July 24, 2017 Comments on the Vernal FO EA. The protocol was developed by a working group consisting of several federal agencies.

In 2009, an Interagency Working Group was formed to develop the protocol and issued final estimates of carbon costs in 2010. See Exhibit 3, to WildEarth Guardians’ July 24, 2017 Comments on the Vernal FO EA. These estimates were then revised in 2013 by the Interagency Working Group, which at the time consisted of 13 agencies. See Exhibit 4, to WildEarth Guardians’ July 24, 2017 Comments on the Vernal FO EA. This report and the social cost of carbon estimates were again revised in 2015. See Exhibit 5, to WildEarth Guardians’ July 24, 2017 Comments on the Vernal FO EA. Again, this report and social cost of carbon estimates were revised in 2016. See Exhibit 6, to WildEarth Guardians’ July 24, 2017 Comments on the Vernal FO EA.

<sup>7</sup> See BLM, News Release: BLM to Offer 75 Parcels in December Oil and Gas Lease Sale, Sept. 1, 2017, [https://eplanning.blm.gov/epl-front-office/projects/nepa/80165/119123/145378/BLM News Release BLM to offer 75 parcels in December oil and gas lease sale 09-01-17.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/80165/119123/145378/BLM%20News%20Release%20BLM%20to%20offer%2075%20parcels%20in%20December%20oil%20and%20gas%20lease%20sale%2009-01-17.pdf).

Most recently, as an addendum to previous Technical Support Documents regarding the social cost of carbon, the Department of the Interior joined numerous other agencies in preparing estimates of the social cost of methane and other greenhouse gases. *See* Exhibit 7, to WildEarth Guardians' July 24, 2017 Comments on the Vernal FO EA.

Depending on the discount rate and the year during which the carbon emissions are produced, the Interagency Working Group estimates the cost of carbon emissions, and therefore the benefits of reducing carbon emissions, to range from \$10 to \$212 per metric ton of carbon dioxide. *See* chart below. In one of its more recent update to the Social Cost of Carbon Technical Support Document, the White House's central estimate was reported to be \$36 per metric ton. Exhibit 7 at 4. Currently, however, the central estimate is reported to be \$50 per metric ton, a value that experts have found to be the "best estimate of the social cost of greenhouse gases" and that experts have urged government officials to consider in their analyses. *See* Exhibit 8, to WildEarth Guardians' July 24, 2017 Comments on the Vernal FO EA.

In July 2014, the U.S. Government Accountability Office ("GAO") confirmed that the Interagency Working Group's estimates were based on sound procedures and methodology. *See* Exhibit 9, to WildEarth Guardians' July 24, 2017 Comments on the Vernal FO EA.

Year	5% Average	3% Average	2.5% Average	High Impact (95 <sup>th</sup> Pct at 3%)
2010	10	31	50	86
2015	11	36	56	105
2020	12	42	62	123
2025	14	46	68	138
2030	16	50	73	152
2035	18	55	78	168
2040	21	60	84	183
2045	23	64	89	197
2050	26	69	95	212

**Most recent social cost of carbon estimates presented by Interagency Working Group on Social Cost of Carbon. The 95th percentile value is meant to represent "higher-than-expected" impacts from climate change. *See* Exhibit 7.**

Although often utilized in the context of agency rulemakings, the protocol has been recommended for use and has been used in project-level decisions. For instance, the EPA recommended that an EIS prepared by the U.S. Department of State for the proposed Keystone XL oil pipeline include "an estimate of the 'social cost of carbon' associated with potential increases of GHG emissions." Exhibit 10, to WildEarth Guardians' July 24, 2017 Comments on the Vernal FO EA.

More importantly, the BLM, including the neighboring Billings Field Office, has also utilized the social cost of carbon protocol in the context of oil and gas approvals. In other recent Environmental Assessments for oil and gas leasing in Montana, the Billings Field Office estimated "the annual SCC [social cost of carbon] associated with potential development on



lease sale parcels.” Exhibit 11, to WildEarth Guardians’ July 24, 2017 Comments on the Vernal FO EA. In conducting its analysis, the BLM used a “3 percent average discount rate and year 2020 values,” presuming social costs of carbon to be \$46 per metric ton. *Id.* Based on its estimate of greenhouse gas emissions, the agency estimated total carbon costs to be “\$38,499 (in 2011 dollars).” *Id.* In Idaho, the BLM also utilized the social cost of carbon protocol to analyze and assess the costs of oil and gas leasing. Using a 3% average discount rate and year 2020 values, the agency estimated the cost of carbon to be \$51 per ton of annual CO<sub>2</sub>e increase. *See* Exhibit 12, to WildEarth Guardians’ July 24, 2017 Comments on the Vernal FO EA. Based on this estimate, the agency estimated that the total carbon cost of developing 25 wells on five lease parcels to be \$3,689,442 annually. *Id.* at 83.

To be certain, the social cost of carbon protocol presents a conservative estimate of economic damages associated with the environmental impacts climate change. As the EPA has noted, the protocol “does not currently include all important [climate change] damages.” Exhibit 2 at 1. As explained:

The models used to develop [social cost of carbon] estimates do not currently include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature because of a lack of precise information on the nature of damages and because the science incorporated into these models naturally lags behind the most recent research.

*Id.* In fact, more recent studies have reported significantly higher carbon costs. For instance, a report published this month found that current estimates for the social cost of carbon should be increased six times for a mid-range value of \$220 per ton. *See* Exhibit 13, to WildEarth Guardians’ July 24, 2017 Comments on the Vernal FO EA. In spite of uncertainty and likely underestimation of carbon costs, nevertheless, “the SCC is a useful measure to assess the benefits of CO<sub>2</sub> reductions,” and thus a useful measure to assess the costs of CO<sub>2</sub> increases. Exhibit 2.

That the economic impacts of climate change, as reflected by an assessment of social cost of carbon, should be a significant consideration in agency decision making, is emphasized by a recent White House report, which warned that delaying carbon reductions would yield significant economic costs. *See* Exhibit 14, to WildEarth Guardians’ July 24, 2017 Comments on the Vernal FO EA. As the report states:

[D]elaying action to limit the effects of climate change is costly. Because CO<sub>2</sub> accumulates in the atmosphere, delaying action increases CO<sub>2</sub> concentrations. Thus, if a policy delay leads to higher ultimate CO<sub>2</sub> concentrations, that delay produces persistent economic damages that arise from higher temperatures and higher CO<sub>2</sub> concentrations. Alternatively, if a delayed policy still aims to hit a given climate target, such as limiting CO<sub>2</sub> concentration to given level, then that delay means that the policy, when implemented, must be more stringent and thus more costly in subsequent years. In either case, delay is costly.

*Id.* at 1.

The requirement to analyze the social cost of carbon is supported by the general requirements of NEPA and is specifically supported in federal case law. Courts have ordered agencies to assess the social cost of carbon pollution, even before a federal protocol for such analysis was adopted. In 2008, the U.S. Court of Appeals for the Ninth Circuit ordered the National Highway Traffic Safety Administration to include a monetized benefit for carbon emissions reductions in an Environmental Assessment prepared under NEPA. *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 538 F.3d 1172, 1203 (9th Cir. 2008). The Highway Traffic Safety Administration had proposed a rule setting corporate average fuel economy standards for light trucks. A number of states and public interest groups challenged the rule for, among other things, failing to monetize the benefits that would accrue from a decision that led to lower carbon dioxide emissions. The Administration had monetized the employment and sales impacts of the proposed action. *Id.* at 1199. The agency argued, however, that valuing the costs of carbon emissions was too uncertain. *Id.* at 1200. The court found this argument to be arbitrary and capricious. *Id.* The court noted that while estimates of the value of carbon emissions reductions occupied a wide range of values, the correct value was certainly not zero. *Id.* It further noted that other benefits, while also uncertain, were monetized by the agency. *Id.* at 1202.

More recently, a federal court has done likewise for a federally approved coal lease. That court began its analysis by recognizing that a monetary cost-benefit analysis is not universally required by NEPA. *See High Country Conservation Advocates v. U.S. Forest Service*, 52 F.Supp. 3d 1174 (D. Colo. 2014) (citing 40 C.F.R. § 1502.23). However, when an agency prepares a cost-benefit analysis, “it cannot be misleading.” *Id.* at 1182 (citations omitted). In that case, the NEPA analysis included a quantification of benefits of the project, but, the quantification of the social cost of carbon, although included in earlier analyses, was omitted in the final NEPA analysis. *Id.* at 1196. The agencies then relied on the stated benefits of the project to justify project approval. This, the court explained, was arbitrary and capricious. *Id.* Such approval was based on a NEPA analysis with misleading economic assumptions, an approach long disallowed by courts throughout the country. *Id.* Furthermore, the court reasoned that even if the agency had decided that the social cost of carbon was irrelevant, the agency must still provide “justifiable reasons for not using (or assigning minimal weight to) the social cost of carbon protocol . . .” *Id.* at 1193 (emphasis added). Just last week, a federal district court in Montana cited to the *High Country* decision and reaffirmed its reasoning, rejecting a NEPA analysis for a coal mine expansion that touted the economic benefits of the expansion without assessing the carbon costs that would result from the development. *See Mont. Envtl. Info. Ctr. v. U.S. Office of Surface Mining*, No. CV 15-106-M-DWM (D. Mont. Aug. 14, 2017).

A recent op-ed in the New York Times from Michael Greenstone, the former chief economist for the President’s Council of Economic Advisers, confirms that it is appropriate and acceptable to calculate the social cost of carbon when reviewing whether to approve fossil fuel extraction. *See Exhibit 15, to WildEarth Guardians’ July 24, 2017 Comments on the Vernal FO EA.* Just this year, the Proceedings of the National Academy of Sciences of the United States of America (“PNAS”), acknowledged in a peer-reviewed article from February of this year that the social cost of carbon analysis is “[t]he most important single economic concept in the economics of climate change,” and that “federal regulations with estimated benefits of over \$1 trillion have

used the SCC.” Exhibit 16, to WildEarth Guardians’ July 24, 2017 Comments on the Vernal FO EA.

Clearly, the social cost of carbon provides a useful, valid, and meaningful tool for assessing the climate consequences of the proposed development, and the BLM’s failure to discuss it while simultaneously discussing the benefits of oil and gas development is arbitrary and capricious. While we do not suggest that a comprehensive cost-benefit analysis is required, the fact that economic benefits are touted in the News Release indicates that costs and benefits are useful for assessing the significance of the proposed development. To this end, the BLM must disclose carbon costs in order to fully assess the significance of climate impacts and support any FONSI.

#### **VI. The BLM Fails to Analyze the Cumulative Impacts to the Viewshed of Dinosaur National Monument from the Vernal Field Office Parcels.**

Finally, the BLM’s final EA for the Vernal Field Office Parcels is invalid because the agency fails to analyze the cumulative impacts of the lease sales on the viewshed of Dinosaur National Monument.

Although the BLM has now deferred Parcels 69 and 70 from the sale, this response is not adequate to address our concerns. First, Parcels 69 and 70 are only deferred and not completely removed from future leasing. Additionally, three other parcels remain in close proximity to the entrance to the Monument (063, 064, 071). Indeed, according to the BLM, “Parcel 71 is located within 0.25 mile of the main road that accesses Dinosaur National Monument, and within 1 mile of the Monument.” Furthermore, Parcels 65, 67, and 72 are within the line-of-sight of the Monument. Despite the proximity of these parcels and the potential impacts, the BLM’s EA still fails to fully disclose the impacts of the lease sale on the viewshed impacts and dark night skies of Dinosaur National Monument.

First, the BLM fails to actually analyze the cumulative viewshed impacts that will occur from developing the parcels, including truck traffic, dust, drilling pads, drilling rigs, disturbance from pipelines, and other impacts. Second, the BLM fails to quantify the direct, indirect, and cumulative impacts to the night sky from these activities. BLM would not be leasing these parcels unless there was interest in developing them. And, analyzing the impacts at the drilling stage would piecemeal the impacts, instead of looking at the development of all of the parcels near the Monument. Additionally, it is not enough for the BLM to point to voluntary mitigation measures in an attempt to punt on its NEPA duties to publically disclose the impacts from an action at the earliest point possible. Because of these failures, the BLM’s EA and proposed FONSI are invalid, and BLM should not move forward with leasing any of these parcels.

#### **VII. Conclusion**

In sum, WildEarth Guardians requests that the BLM withhold all of the parcels scheduled for the December 2017 lease sale until the agency completes its obligations under the Clean Air Act, FLMPA, and NEPA as discussed above.

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Sincerely,

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